

**To:** Hart, Daniel[Hart.Daniel@epa.gov]  
**From:** POLITICO Pro Energy  
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**Subject:** Morning Energy, presented by Chevron: If you like the war on coal ... — Highway to Shell — States ask court to block carbon rule

By Elana Schor | 8/14/15 5:46 AM EDT

*With help from Alex Guillen and Darius Dixon*

**IF YOU LIKE THE WAR ON COAL ... :** President Obama’s critics accuse him of waging a “war on coal.” But the next phase of his environmental agenda has the oil and natural gas industry in its crosshairs, with plans to curb greenhouse gas pollution from rigs and refineries, tighten oversight of drilling on public lands and impose a strict ozone standard that industry lobbyists slam as “the most expensive regulation ever.” Environmentalists say the new round of regulations is long overdue, but drillers warn that this quieter, more piecemeal barrage is a “regulatory avalanche or tidal wave.”

Your faithful morning host has the full story: <http://politico.pro/1Po5DjS>

**HIGHWAY TO SHELL:** Against the backdrop of these hits on oil and gas is one potential bright spot for the industry. The Interior Department is expected to decide as soon as today on Shell’s request to modify its Arctic drilling permits in order to tap oil- and gas-bearing zones beneath Alaska’s Chukchi Sea.

The Bureau of Safety and Environmental Enforcement has since last week been vetting the company’s bid — which would expand an Arctic exploration plan already directing a firestorm of green ire in Obama’s direction — and a final decision may yet slip into next week.

**T.G.I.F.** and welcome to of Morning Energy, where we’re taking inspiration for this busy news month from the new season of Doctor Who — make a plan and make it spectacular: <http://bit.ly/1fbBG9K>. Lend a hand to your new guest host by sending your best energy tips, hints and leads to [eschor@politico.com](mailto:eschor@politico.com) and following us at [@eschor](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**THIRSTY THURSDAY — STATES ASK COURT TO BLOCK CARBON RULE:** EPA’s final carbon rule for power plants has yet to hit the Federal Register, but 15 states couldn’t wait any longer to ask the courts to step in and block the rule. West Virginia and 14 other states on Thursday asked the D.C. Circuit Court of Appeals to block the rule. They argue that states face specific deadlines that force them to start planning now, and thus they cannot wait potentially months for EPA to formally publish the rule in the Federal Register, which would open the floodgates to lawsuits. “We want to ensure that no more taxpayer money or resources are wastefully spent in an attempt to comply with this unlawful rule that we believe will ultimately be thrown out in court,” West Virginia Attorney General Patrick Morrissey said in a statement. An EPA spokeswoman told POLITICO there is no specific date to publish the rule.

**And on the opposing side:** Soon after the filing, attorneys general from 15 states and the

District of Columbia vowed to oppose any request for a stay of the regulations, led by New York AG Eric Schneiderman.

**Oh won't you stay with ME:** EPA supporters question whether the court will stop the rule because it gives states until 2022 to start complying and until 2018 to submit final plans. That's well after the expected court challenge, in the circuit at least, will have ended, and it's not clear that the court will consider states regulators having to start working on a plan now as "irreparable harm."

**Mercury in parallel?** This is the latest attempt by EPA's foes to draw a parallel between the carbon rule and EPA's mercury rule, which the Supreme Court remanded to the agency after it had largely gone into effect. With the carbon rule, the states argue that EPA "could use the uncertain gap between finalization and publication to squeeze practical compliance from regulated parties before judicial review can begin — a tactic strikingly similar to the one that EPA touted after its recent Supreme Court loss in" the mercury case. One difference between the two cases: The challengers of the mercury rule didn't ask for the court to stay it during litigation, which is what led to the Supreme Court kicking it back to the agency even though the first compliance deadline had already passed.

**EPA burn:** These court filings sometimes let frustration break through the legalese, like in this line: "Given that EPA has repeatedly missed its own deadlines as to the Section 111(d) Rule, the agency cannot possibly claim any need for the Rule's deadlines to go into effect immediately."

**EH, WHAT'S UP DOC:** Take note, data nerds: EPA has released data used in its power sector modeling. These are some big files, so don't try this on your phone. <http://1.usa.gov/1IOSsE9>

**MOST STATES ON TRACK TO MEET CPP TARGET — UCS:** While state attorneys general go to the mattresses against EPA's power-plant rules, a new analysis from the Union of Concerned Scientists found that 31 states are already more than halfway to meeting their Clean Power Plan emissions-reduction goals. Taking into account renewable electricity standards, efficiency mandates and regional carbon curbs, the green group found 21 states even on pace to exceed their EPA targets. Check out the full analysis here: <http://bit.ly/1hAbebN>

**RUMOR HAS IT, HE'S THE ONE REJECTING KEYSTONE:** Just when you thought Washington had reached peak pipeline speculation, a couple of hypothetical scenarios for President Obama's widely anticipated rejection of the \$8 billion Keystone XL are emerging. Some avid watchers of the pipeline are eyeing the presidential keynote speech at Senate Minority Leader Harry Reid's (D-Nev.) annual clean energy conference in Las Vegas as an ideal forum for Obama to publicly deny Keystone a border-crossing permit. Others wonder if Obama will settle the pipeline's fate during his climate-focused visit to Alaska at the end of the month. Cue the Adele ...

**But consider the framing.** Obama's Alaska tour is all but guaranteed to bring protests from environmental groups opposed to drilling permits for Shell, which would make a less-than-ideal backdrop for handing them the massive victory that a Keystone denial would represent. Killing the pipeline at Reid's conference, which focuses on the transition to clean energy, would make

for much better optics.

**\*\* A message from Chevron:** Congratulations to the winners of the first-ever US2020 STEM Mentoring Awards. Chevron is proud to be a Co-sponsor of the award, and to recognize the mentors who are helping cultivate the next generation of STEM professionals. See how Chevron supports America's future innovators: <http://tinyurl.com/osvg85y> \*\*

**IT'S A BEACH READ:** The books President Barack Obama took with him to read on his Martha's Vineyard vacation include a Jhumpa Lahiri novel and Ta-Nehisi Coates's latest work. Sure to grab greens' eye: "The Sixth Extinction," Elizabeth Kolbert's 2014 Pulitzer winner arguing that human-driven climate change is causing mass extinction.

**Or as Breitbart put it:** "Obama Summer Book List Includes Doomsday Climate Change Extinction Book"

**Gore MIGHT MAKE LIKE BACKSTREET:** Oh my god, he's back again? Boosters of former Vice President Al Gore are said to be mulling a way for him to mount a 2016 presidential run, according to BuzzFeed. The Nobel Prize-winner "has taken a step back from the climate change advocacy groups he helped to found" in recent years but has ensured his place in climate activists' pantheon by publicly opposing Keystone and Shell's Arctic plans, the site reports: <http://bzfd.it/1ILD2CN>

**INTERIOR'S COAL SHOW HITS CHENEY COUNTRY:** The Interior Department's series of public listening sessions on the federal coal program stopped in Wyoming on Thursday after a Tuesday session in Montana, where Republican lawmakers urged the Obama administration to back away from any attempts to raise royalties. Rep. Cynthia Lummis (R-Wyo.), who joined her state's GOP Sens. John Barrasso and Mike Enzi at a pro-coal event timed to the listening session, warned Interior officials not to fight climate change through tweaks to coal leasing. "If the President wants to raise power costs on the poor and middle class and make our grid less reliable, he doesn't need royalties and taxes to do it," Lummis said in her remarks. "He has the EPA."

**NEW YUCCA STUDY FINDS LITTLE RISK:** The Nuclear Regulatory Commission on Thursday rolled out a new draft groundwater study that found Yucca Mountain isn't expected to put public health at risk, but don't expect the findings to shift the already-calcified politics around the controversial nuclear waste site. To wit, Nevada Rep. Dina Titus released a quick statement slamming the assessment as a waste of energy and resources." Meanwhile, Sen. Lamar Alexander, who chairs the energy and water appropriations subcommittee, said the study "is yet more evidence that to continue to oppose Yucca Mountain because of radiation concerns is to ignore science as well as the law." Regulators will start taking comments on the draft SEIS once it's published in the Federal Register, presumably Aug. 21, while the final SEIS is slated for release next spring. Public meetings and conference calls are expected in September and early October. Check it out here anyway: <http://1.usa.gov/1faBmYO>

**Keep in mind that the White House hopefuls** in both parties have to come up with a public position on Yucca fairly soon. Even though it isn't necessarily the top issue in Nevada, the

project still makes a lot of people there squirm — and those folks are now among the early caucus states in the presidential nominating process. While we're not expecting anything short of broad opposition at the Oct. 13 Democratic debate, perhaps the CNN moderator will ask the candidates to propose an alternative. Republicans, for whom this will be trickier matter to navigate, have a debate scheduled in the state set for Dec. 15.

**JUDGE BACKS FERC ON BP MANIPULATION CHARGE:** An administrative law judge sided with FERC yesterday on the agency's allegation that a BP team in Texas manipulated gas markets in 2008. Two years ago, the company received a "show cause" order from regulators asking it explain why the company shouldn't be found in violation of the Natural Gas Act for manipulating the natural gas market at Houston Ship Channel — and face a \$28 million civil penalty, and disgorge profits of \$800,000, plus interest. BP had fired back at the time saying that the allegations were "without merit" and challenged FERC's jurisdiction. But the company's arguments didn't convince the judge. "This is a classic case of physical for financial benefits," Judge Carmen Cintron wrote in an "initial" decision. "BP participated in an unlawful scheme to manipulate the HSC *Gas Daily* index to benefit their financial positions." According to Reuters (<http://reut.rs/1MnmrYz>), BP plans to appeal the ruling to the FERC leadership. The judge's 110-page order: <http://1.usa.gov/1faWX3b>

## QUICK HITS:

— EPA releases surface-water test results showing a significant spike in heavy metals following the Gold King Mine spill in Colorado. AP: <http://strib.mn/1PntvnK>

— Environmentalists linking Land and Water Conservation Fund reauthorization to upcoming Gulf of Mexico drilling auction. Houston Chronicle: <http://bit.ly/1PaCFmN>

— Beleaguered Kemper 'clean coal' plant gets a boost from Miss. regulators. Bloomberg: <http://bit.ly/1JfX7o4>

— If global warming really did hit pause, the planet just pressed 'play' again. WaPo: <http://wapo.st/1WnXzEG>

**That's all for ME.** Sunny with a high of 89. Go play outside this weekend, y'hear?

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## Stories from POLITICO Pro

[Obama's quiet war on oil](#)

**Obama's quiet war on oil back**

By Elana Schor | 8/13/15 7:58 PM EDT

President Barack Obama's enemies have long accused him of waging a "war on coal." But a very different war on oil and gas is coming next.

The newest phase of Obama's environmental agenda has the oil and natural gas industry in its crosshairs, with plans to curb greenhouse gas pollution from rigs and refineries, tighten oversight of drilling on public lands and impose a strict ozone limit that industry lobbyists slam as "the most expensive regulation ever."

The administration still might hand some modest victories to the industry along the way — as early as Friday, for example, the Interior Department may give Shell Oil a final green light for expanded drilling off Alaska's Arctic coast. And unlike the massive climate rule that the EPA issued for power plants last week, the administration's actions on oil and gas will be quieter, more piecemeal and harder to track.

Still, the oil industry's top lobbying group says it's facing a "regulatory avalanche or a tidal wave" — one that some of Obama's critics have been bracing for.

The administration has "ridden this horse as far as it wants to ride it," GOP energy lobbyist and strategist Mike McKenna said in an interview, tying the oil and gas crackdown to Obama's efforts to make wind and solar power more competitive. He said Obama and his team "have always been very clear-eyed about their strategy: they want to make affordable, dependable, traditional fuels like oil, gas and coal more expensive. ... This is just the natural rush at the finish line."

But greens say it's past time for Obama to start reining in oil and gas as the next step in the climate legacy that he's made such a priority for his second term. For these activists, the EPA's power plant rules represented only a down payment.

"We've seen the administration willing to take on King Coal," Jamie Henn, co-founder of the climate activist group 350.org, said in a recent interview. "They've got to go after bigger bad guys, like Big Oil and the Koch brothers."

Environmentalists say the upcoming actions still won't hit drillers and refiners as hard as EPA is hitting coal-burning power plants.

For example, the administration promised this year to slash oil- and gas-related emissions of methane — an especially potent greenhouse gas — by as much as 40 percent from 2005 levels by 2025. But that level of reduction is "not hard, nor is it particularly costly" to achieve, Environmental Defense Fund Vice President Mark Brownstein said.

Unlike the tectonic realignment away from coal underway in the power sector, thanks in part to the EPA's rules, "nothing would be required of the oil and gas industry that would cause it to have to fundamentally rethink how it does business," he added.

Republicans in Congress may yet succeed in stopping or slowing down some of the multiple regulations that oil and gas hate the most during final negotiations on funding the government beyond next month. But GOP leaders have little to no appetite for risking a government shutdown to bury the regulations. And the refinery and ozone regulations are both tied to court-ordered deadlines this fall, making it harder for lawmakers to stop the train.

The limits on toxic air emissions from refineries that EPA proposed last year could cost more than \$20 billion to implement, according to industry estimates, though the American Petroleum Institute said on Thursday that it hopes to see the final version significantly scaled back. EPA's projected price tag was much smaller, at \$239 million in total costs for the new emissions standards.

The National Association of Manufacturers has offered an even more gargantuan cost estimate for the ozone rule that EPA proposed in November, warning it could wipe out \$3.4 trillion in economic output and 2.9 million jobs by 2040. The agency disagrees, saying the costs would amount to no more than \$16.6 billion a decade from now, compared with as much as \$42.1 billion in benefits such as reductions in deaths and illnesses.

The updated ozone rule "will be based on the law and an exhaustive, open and transparent review of a large body of science, along with advice from an independent panel of leading air quality and health experts," EPA spokeswoman Laura Allen said Thursday. The rule, required to become final by Oct. 1, would set the standard at between 65 and 70 parts per billion, down from a George W. Bush-era standard of 75 parts per billion.

Allen said the agency's regulations on methane pollution from oil and gas drilling, set for release before the summer's end, will make room for both current industry practices and "emerging innovations" and will be aimed at cutting emissions while "oil and gas production and operations continue to grow."

The political battle is complicated by the fact that the oil and gas rules are moving through EPA and the Interior Department with far less public fanfare than the Obama-touted plan to push down power plant pollution. And the president continues to praise the economic power of the domestic oil and gas boom while risking greens' ire with moves to open up parts of the nation's coasts to offshore drilling.

But fossil fuels' friends in Washington are growing less patient with mere rhetorical support from the administration, especially as industry suffers from crude oil prices that have plummeted by more than half in the past year.

For Obama, Shell's Alaskan drilling permit is "a completely free thing to be in favor of," lamented the GOP lobbyist McKenna, because the company may yet abandon the project.

Although the oil and gas curbs set to unspool during the last months of the Obama era affect a far more diverse industry than power plants, the industry looks at their impact alongside the historic carbon dioxide standards that EPA unveiled last week and sees a president moving far left on the

environment — abandoning the “all-of-the-above” energy brand he embraced during his reelection run.

“All of this is coming down on us very hard right now,” said Howard Feldman, API’s senior director of regulatory affairs. He quipped to reporters Thursday that API uses various dire metaphors to describe the impending oil and gas rules, “depending on our mood.”

API is running what Feldman described as a “significant” television ad campaign in seven states this month that urges the administration to leave the Bush-era ozone standard intact. It has also made a separate Washington ad purchase on the issue.

“Anybody who thought getting rid of coal was going to be the end of concern about climate regulations’ impact on the fossil fuel sector” now sees “that’s a questionable assumption,” said Salo Zelermyer, a top Energy Department official under George W. Bush who now advises industry clients at Bracewell & Giuliani.

In addition to EPA’s methane regulations, which are expected to affect existing emissions sources narrowly if at all, Interior’s Bureau of Land Management is preparing to open a White House budget office review as soon as this month on rules for drillers’ releases of the greenhouse gas on public lands. A separate BLM fracking regulation unveiled in March is stuck in legal limbo thanks to a challenge by two regional oil and gas groups but could go forward next month.

Beyond further legal challenges, critics of Obama’s oil and gas agenda have few options to stop it, even as the president prepares an Alaskan visit this month to plug the EPA power plant rules and his advisers look ahead to a global climate pact during United Nations talks in Paris later this year. But the industry continues to exhort the administration in hopes of winning concessions.

“At one point we went to [the White House Office of Management and Budget] three weeks in a row,” Feldman of API said. “I know my way around the conference rooms.”[back](#)

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